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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590**

JUL 21 2009
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Randall V. Griffin
Chief Regulatory Counsel
Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432

RE: Administrative Order Directing Compliance with Request for Access
for South Dayton Dump and Landfill Remedial Investigation/ Feasibility
Study

Dear Mr. Griffin:

Enclosed is an Administrative Order ("Order") for access to the Dayton Power and Light (DPL) property located at 1900 Dryden Road in Moraine, Ohio. The U.S. Environmental Protection Agency and its designated representatives require access to the DPL property to conduct work associated with the remedial investigation/feasibility study at the adjacent South Dayton Dump and Landfill site.

If you have any questions concerning this Administrative Order, or would like to request an opportunity confer, please contact Mr. Thomas Nash, Associate Regional Counsel at 312-886-0552 or at nash.thomas@epa.gov, or Mr. Ignacio Arrazola, Supervisory Attorney-Advisor at 312-886-7152 or at arrazola.ignacio@epa.gov within three business days after your receipt of this Order.

Sincerely,

Karen Cibulskis
Remedial Project Manager

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

South Dayton Dump & Landfill Site, in
Moraine, Montgomery County, Ohio and
Property located at: 1900 through 2152
Dryden Road in Moraine, Ohio, including:
(i) Montgomery County Parcel
Identification Numbers: (i) J44-04102-0019
(Lot 3061), (ii) J44-04101-003 (Lot 2941),
and (iii) J44-20907-0004 (Lot 1041).

**ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR
ACCESS**

U.S. EPA Region 5

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

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I. JURISDICTION

1. This Administrative Order (“Order”) is issued to Dayton Power and Light Company (hereinafter, “Respondent” or “DP&L”), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400 (d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, and further delegated to the Director of the Superfund Division, Region 5, EPA, by Regional Delegation 14-6.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives entry and access to the property described in Paragraph 3 below located in Moraine, Ohio in Montgomery County, for the purpose of determining the need for, or selection of, a response to a release or threatened release of a hazardous substance, pollutant or contaminant, or otherwise enforcing the provisions of CERCLA, at the South Dayton Dump and Landfill Site. Access for the above purpose includes activities related to a groundwater investigation and the installation, maintenance, and use of permanent monitoring wells at the property described in Paragraph 3 below. This Order further requires Respondent, and/or employees, agents or representatives of

Respondent, to refrain from interfering with access to the property described in Paragraph 3 below by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. Respondent controls and/or owns Property that is described in this Paragraph 3 (hereinafter “Property” or “Respondent’s Property”). The Respondent’s Property that is the subject of this Order is located in Moraine, Ohio, in Montgomery County, across the street from, and about 100 feet east of the South Dayton Dump and Landfill Site (“Site”). The Respondent is listed as the owner of this Property in the Montgomery County, Ohio County Auditor’s Page database (www.mcrealestate.org). The Respondent’s Property is located at 1900 through 2152 Dryden Road in Moraine, Ohio. The Respondent’s Property includes Montgomery County Parcel Identification Numbers J44-04102-0019 (Lot 3061), J44-04101-003 (Lot 2941), and J44-20907-0004 (Lot 1041). See Attachment A.

4. The South Dayton Dump and Landfill Site (Site) is proposed to be listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B) (See 69 Fed. Reg. 56970-56976, September 23, 2004). Releases and threatened releases of hazardous substances, pollutants or contaminants have been documented at the Site. The Site is approximately 80 acres in areal extent and is located at 1901 through 2153 Dryden Road, and 2225 and 2335 East River Road in Moraine, Ohio. The Site is adjacent to the floodplain of the Great Miami River. Approximately 25,060 people live within a 4-mile radius of the Site. Six single family residences are located on the northwest side of East River Road and are adjacent to the southeast boundary of the Site. A seventh single family home

is located on the southeast side of East River Road and is within 300 feet of the Site. A trailer park with several residences is also situated approximately 300 feet southeast of the Site at the southeast intersection of Dryden Road and East River Road.

5. Disposal of waste materials began at the Site in 1946. Materials dumped at the Site included drummed wastes. Known hazardous substances were disposed at the Site, including drums containing hazardous waste from nearby facilities. Some of the drums contained cleaning solvents (1,1,1-trichloroethane (“TCA”); methyl ethyl ketone (“MEK”); and xylene); cutting oils; paint; Stoddard solvents; and machine-tool, water-based coolants. The Site had previously accepted materials including oils, paint residue, brake fluids, chemicals for cleaning metals, solvents, etc. Large quantities of foundry sand and fly ash were dumped at the Site. Asbestos was dumped at the Site.

6. Witnesses and records indicate that Dayton Power & Light dumped wastes at the Site for over 40 years. Witnesses indicated that while most customers paid a fee for each individual load dumped at the Site, Dayton Power & Light paid a monthly fee in return for unlimited access to the Site and the ability to dump at any time. One witness described electrical transformers dumped at the Site by Dayton Power & Light. The same witness testified that he saw the Site operator dismantle and drain these transformers to remove the copper wire they contained.

7. On August 10, 2006, U.S. EPA and several potentially responsible parties at the Site entered into an Administrative Settlement Agreement and Order on Consent (“ASAOC”) to perform a Remedial Investigation/Feasibility Study for the Site.

8. The Respondents to the ASAOC for Remedial Investigation/Feasibility Study in the Matter of the South Dayton Dump and Landfill (CERCLA Docket Number V-W-'06-C-852) undertook a groundwater investigation at the Site. The ASAOC Respondents identified groundwater contamination at the Site, including groundwater contamination along the eastern boundary of the Site. Groundwater sampling locations with volatile organic compounds ("VOCs") and metals at concentrations greater than federal Maximum Contaminant Levels ("MCLs") are shown in Figures 11 and 13 in the Phase I Groundwater Report submitted by Conestoga-Rovers & Associates (CRA). Free-phase product was also encountered at vertical aquifer sampling ("VAS") location VAS-4.

9. The groundwater contamination along the eastern boundary of the Site is across the street from, and about 100 feet west of Respondent's Property east of Dryden Road. Groundwater contaminants detected above MCLs within approximately 100 feet of the Respondent's Property (locations VAS-14, VAS-15 and VAS-21) include trichloroethene ("TCE"), vinyl chloride, cis-1,2-dichloroethene, benzene, arsenic and lead.

10. Preliminary groundwater elevation monitoring and mapping conducted by the ASAOC Respondents in 2008-2009, and by Site property owners from 1998-2002 indicates groundwater flow direction in the vicinity of the Site is variable. During the July 2008 to December 2008 monitoring events, groundwater flow appears to be generally to the west, with occasional components of flow to the northwest and southwest (Figures 2 to 7 in the Phase I Groundwater Report submitted by CRA). During the January 2009 monitoring event, groundwater flow appears to be primarily to the southwest (See the Phase I Groundwater Report submitted by CRA, Figure 8). During the February 2009 monitoring event, groundwater flow

appears to be primarily to the southeast (See the Phase I Groundwater Report submitted by CRA, Figure 9).

11. The ASAOC Respondents' groundwater flow maps are similar to 1998-2002 groundwater flow maps submitted by Site property owners (See the Payne Firm Inc., Environmental Data Summaries) which indicate groundwater flow direction at the Site is variable.

12. In 1989, two 10,000-gallon gasoline underground storage tanks ("USTs") were removed west of the Garage Building on the Respondent's Property. Groundwater samples from monitoring wells in the vicinity of the removed USTs contained chemicals above MCLs including benzene (maximum concentration 3,700 ug/L; MCL 5 ug/L), toluene (maximum concentration 11,000 ug/L; MCL 1,000 ug/L), ethylbenzene (maximum 6,100 ug/L; MCL 700 ug/L) and lead (maximum concentration 18 ug/L; MCL action level 15 ug/L) (see Figure 4 and Table 5 in "Site Investigation Performed at Dayton Power and Light Company Transportation Center 1900 Dryden Road, Dayton, Ohio," November 6, 1989). The groundwater samples were not analyzed for TCE, vinyl chloride, cis-1,2-dichloroethylene or arsenic.

13. Boring logs and well construction diagrams submitted with the November 6, 1989, Site Investigation report show soil borings drilled on Respondent's Property in the vicinity of the USTs contained up to 11 feet of fill material including: black-brown sandy clay with glass, oxidized metal fragments and cinders in B-1/MW-1; black-brown sandy clay with glass and oxidized metal fragments in B-2; black sandy gravel with coal ash-like odor and black silty clay with cinders and roofing tar odor in B-3/MW-2; and black sandy clay which appears to be

fill material and cinders in B-4/MW-3. The fill material in the borings was not chemically analyzed.

14. Groundwater elevation data collected by Hunter/Keck on behalf of the Respondent shows that on September 12, 1989, groundwater flow beneath the Respondent's Property was to the southwest (See the "Site Investigation Performed at Dayton Power and Light Company Transportation Center 1900 Dryden Road, Dayton, Ohio," November 6, 1989, Figure 4).

15. In 1990, a 20,000 gallon steel UST was removed east of the Service Center building on the Respondent's Property. The UST removal was documented by Bowser-Morner in a March 19, 1990, report "Underground Storage Tank Closure, Dayton Power and Light Company, 1900 Dryden Road, Dayton, Ohio." The UST excavation was cut into twelve to eighteen inches of asphalt and base, six to eighteen inches of fly ash and gravel, and brown sand with fly ash traces to an undetermined depth. The material surrounding the UST appeared to be the same as the construction fill under the parking area. Fly ash content was greatest toward the northeast corner of the excavation.

16. Four soil samples were collected from the bottom of the UST excavation and analyzed for total petroleum hydrocarbons ("TPH"). All four soil samples contained TPH at concentrations from 42 to 233 mg/Kg. Additional material was removed from the excavation and three additional soil samples were collected from the bottom of the re-excavated area for TPH analysis. All three additional soil samples contained TPH at concentrations from 30 to 77 mg/Kg.

17. Background soil samples collected from Respondent's Property at two locations outside the influence of the UST contained TPH at concentrations of 120 mg/Kg and 167 mg/Kg. The March 19, 1990 closure report concluded the TPH in the excavated area were not the result of product leakage from the UST, but due to emissions from heavy traffic, fluid fractions from asphalt paving activities, or from the construction fill of uncertain origin surrounding the UST. The UST soil samples and background soil samples were not analyzed for any other chemical parameters.

18. The March 19, 1990, closure report includes data for a sample with the project name "DP&L – Dryden Road" and a sample description "Landfill No. 1". Sample "Landfill No. 1" was a composite soil sample analyzed for polychlorinated biphenyls ("PCBs") and other limited parameters. Sample "Landfill No. 1" contained 3 mg/Kg of PCB-1260.

19. The March 19, 1990 closure report states the Respondent's Property includes an oil process building with three oil storage tanks in the basement and an above-ground storage tank south of the oil storage building with PCB-contaminated oil. The March 19, 1990, closure report includes a figure showing operations areas on the Respondent's Property, including oil processing, oil storage, PCB-contaminated oil handling and storage, transformer maintenance and ash pits.

20. On January 8, 2001, Respondent submitted a "Remedial Action Plan, DP&L Transportation Center, 1900 Dryden Road, Dayton, Montgomery County, Ohio" ("RAP") to the Ohio Bureau of Underground Storage Tanks ("BUSTR"). The RAP states Respondent's Property is characterized by the presence of fill materials, consisting of foundry sand, cinders, metal, clay, etc., beneath the ground surface at a thickness of up to 21 feet.

21. The January 8, 2001, RAP states the latest groundwater measurements indicate subsurface flow is to the southwest across Respondent's Property.

22. The January 8, 2001, RAP indicates the groundwater treatment system installed at Respondent's Property in the vicinity of the two 10,000 gallon UST removed from Respondent's Property was not as effective as expected.

23. On October 18, 2005, LJB, Inc. submitted a "Remedial Action Monitoring Letter Report for the DP&L Transportation Center, Dryden Road, Ohio" to BUSTR. The October 18, 2005, letter states that in 2004, DP&L installed and began operating a biosparge treatment system in three shallow groundwater monitoring wells in the vicinity of the 10,000 gallon UST removal on Respondent's Property.

24. The October 18, 2005, letter shows benzene concentrations in the groundwater on Respondent's Property were as high as 45,000 ug/L in 1994. In 2005, one year after the biosparge treatment system began operating, benzene concentrations at Respondent's Property were as high as 1,200 ug/L. These concentrations of benzene are significantly above the 5 ug/L MCL for benzene. The maximum concentration of ethylbenzene on Respondent's Property in 2005 was 2,600 ug/L. This concentration of ethylbenzene is above the MCL for ethylbenzene of 700 ug/L. The October 18, 2005, letter includes data for toluene and xylene (detected below MCLs), but does not include analytical data for other chemicals (e.g., other VOCs, semivolatile organic compounds, PCBs/pesticides and metals).

25. Figure 1 in the October 18, 2005, letter includes a flow map. The flow map indicates that on March 28, 2005, groundwater flow on Respondent's property was generally to the south-southwest.

26. Figure 1 in the October 18, 2005, letter shows eight additional USTs on Respondent's Property. The eight USTs were west of the Garage building, north of the two 10,000 gallon USTs removed in 1989. Figure 1 indicates the eight USTs were removed in the 1980s. The contents of the eight USTs are not stated, and there is no discussion of analytical data.

27. Due to variable groundwater flow direction(s) observed in the vicinity of the Site, and based on the fill material and hazardous substances, pollutants or contaminants documented at Respondent's property, Respondent's Property may, at times, be a source of, or contributing to groundwater contamination along, and downgradient of the eastern boundary of the Site. Similarly, the hazardous substances, pollutants or contaminants documented in the landfilled materials ("Results of the Test Pit/Test Trench Investigation South Dayton Dump and Landfill Site, Moraine, Ohio," Letter Report submitted by CRA, December 11, 2008) and/or groundwater at the Site (See the Phase I Groundwater Report submitted by CRA) may, at times, be migrating off-Site and beneath the Respondent's Property.

28. The off-Site extent of groundwater contamination originating from the Site has not been defined. Similarly, any impacts to Site groundwater originating from Respondent's Property has not been defined. Groundwater flow direction(s) and contaminant fate and transport between the Site and Respondent's Property, including temporal variations are not known.

29. To address the release and/or threatened release of hazardous substances, pollutants or contaminants at and adjacent to the Site (including by-products from degradation), EPA is conducting certain response actions. These actions include performing a remedial investigation/feasibility study ("RI/FS") at the Site.

30. To perform the response actions described above, it will be necessary for employees, agents, contractors, other representatives of EPA and the ASAOC Respondents to enter the Respondent's Property. The activities for which entry is required will involve, at a minimum, conducting vertical aquifer groundwater sampling, installing groundwater monitoring wells, monthly groundwater elevations and two rounds of groundwater sampling at three locations on Respondent's Property (see VAS-26, VAS-27 and VAS-28 in Figure 3 of the "Proposed Investigative Locations on Dayton Power & Light (DP&L) Property," Memorandum from Adam Loney, CRA, to South Dayton Dump & Landfill Site Potentially Responsible Party (PRP) Group, dated March 17, 2009). Entry will also be required to collect monthly groundwater elevation measurements and two rounds of groundwater sampling from existing groundwater monitoring wells on Respondent's Property. Soil samples for chemical analysis may also be collected from the VAS borings on Respondent's Property if the material in a boring does not appear to be undisturbed soil or clean fill. Based on the results of the initial work, additional work may be conducted on Respondent's Property to further characterize and define the extent of any soil or groundwater contamination detected at the VAS locations or existing monitoring wells.

31. VAS-26 is located on Respondent's Property near the Garage building in the area where the two 10,000 gallon USTs were removed. Groundwater contaminants and potentially contaminated fill material were documented near VAS-26. VAS-26 is located within approximately 175 feet of the Site and may, at times, be upgradient of some Site areas or downgradient or sidegradient of some Site areas depending on groundwater flow. An additional groundwater monitoring well(s) and groundwater elevation monitoring at the VAS-26 location

will help refine groundwater flow directions and assist in evaluating contaminant fate and transport between the Site and Respondent's Property.

32. VAS-27 is located on Respondent's Property across the street from and about 150 feet east of the Site. VAS-27 may, at times, be downgradient of the 20,000 gallon UST that was removed and potentially contaminated fill material in the area of the UST removal, and upgradient of some Site areas. Depending on groundwater flow, VAS-27 may, at times, also be downgradient or side-gradient of some Site areas. An additional groundwater monitoring well(s) and groundwater elevation monitoring at the VAS-27 location will help refine groundwater flow directions and assist in evaluating contaminant fate and transport between the Site and Respondent's Property.

33. VAS-28 is located on Respondent's Property across the street from and about 250 feet east of the Site. VAS-28 is located approximately 325 feet from VAS-4 where free product was identified at the Site. An additional groundwater monitoring well(s), groundwater sampling and groundwater elevation monitoring at the VAS-28 location will help refine groundwater flow directions and contaminant fate and transport between the Site and Respondent's property.

34. Groundwater samples will be collected from all three VAS locations at 5-foot intervals from the water table to a minimum of 100 feet below ground surface. The groundwater samples will be analyzed, at a minimum, for VOCs, and total and dissolved arsenic and lead. The VAS boreholes will be left open pending receipt of the laboratory analytical results. Once the analytical results are received from the laboratory, a monitoring well(s) will be installed at each VAS location with the screen interval set at the depth(s) corresponding to the highest contaminant concentration(s). The new and existing groundwater monitoring wells on

Respondent's Property will be surveyed and used to evaluate groundwater elevations.

Groundwater samples will be collected from each new well and existing wells on Respondent's Property and analyzed for Target Compound List ("TCL") VOCs, TCL semivolatile organic compounds, TCL pesticides and herbicides, TCL PCBs, Target Analyte List metals (dissolved and total) and monitored natural attenuation parameters.

35. A minimum of two rounds of groundwater samples will be collected from all new and existing groundwater monitoring wells on Respondent's Property. Additional groundwater sampling and groundwater elevation monitoring may be conducted to further evaluate contaminant concentrations in groundwater and groundwater flow direction(s) over time.

36. EPA estimates the duration of the required entry and access will be on an intermittent basis for approximately 1 year. Approximate time frames for specific tasks include approximately 21 days to complete VAS at the VAS-26, VAS-27 and VAS-28 locations, about 15 days to install and develop monitoring wells at the VAS-26, VAS-27 and VAS-28 locations, about two days to survey new and existing wells on Respondent's Property, about 7 days to conduct each groundwater sampling event, and about 1 day per month to collect groundwater elevations.

37. Despite requests from representatives of EPA, Respondent has refused to provide access for purposes of performing the response activities described above. These requests include letters dated May 1, 2008, December 17, 2008, and March 18, 2009, from Ken Brown, ASAO Respondents' representative, to Randall Griffin, Respondent's Chief Regulatory Counsel; email dated June 6, 2008, December 21, 2008, December 23, 2008 and March 18, 2009 from Ken Brown, ASAO Respondents' representative, to Randall Griffin, Respondent's Chief

Regulatory Counsel; a March 2, 2009 conference call among ASAOC Respondents' representatives, Respondent's representatives, and EPA representatives including Karen Cibulskis, EPA Remedial Project Manager for the Site; and an April 3, 2009 phone call between Ken Brown, ASAOC Respondents' representative and Randall Griffin, Respondent's Chief Regulatory Counsel. On June 9, 2009, at 9:00 a.m., EPA representatives spoke with representatives of Dayton Power and Light (DPL). The purpose of the call was to request access to DPL property across the street from the South Dayton Dump and Landfill (SDDL) site to collect groundwater data and other information to be used to complete a RI/FS for the site. DPL stated they would not allow EPA access to DPL property to collect data to complete a RI/FS.

38. EPA and the ASAOC Respondents have been ready to perform the work at Respondent's Property since November, 2008, but have been prevented from so doing because of the Respondent's failure to grant access. Respondent's failure to grant access is delaying the RI/FS for the Site and is delaying EPA's responsibility to evaluate cleanup alternatives and select and implement a cleanup remedy at the Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

39. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

40. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

41. All of the substances listed in Paragraphs 5, 8, 9, 15, 18, 19, and 20 above are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14) and (23).

42. The past and/or present disposal and migration of hazardous substance or pollutant or contaminant at or from the Site constitutes an actual "release" or a threat of such a release into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22), and thus there is a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

43. The property owned or controlled by Respondent referred to in Paragraph 3 above is, or is adjacent to property:

a. where a hazardous substance has been generated, stored, treated, disposed of, or transported from; and

b. from or to which a hazardous substance has been or may have been released; and

c. where such release is or may be threatened; and

d. where entry is needed to determine the need for response and/or to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

44. Entry to property owned or controlled by Respondent by the agents, contractors, or other representatives of the United States is needed for the purposes of determining the need

for response, choosing a response action, or otherwise enforcing the provisions of CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

45. Respondent's attempts to condition its grant of access amounts to a denial of access within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. 300.400(d)(4)(i).

V. ORDER

46. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including but not limited to investigating the source of groundwater contamination at the Site, including installation of three (3) VAS borings, groundwater monitoring well installation, groundwater elevation monitoring, groundwater sampling and soil sampling as described in Paragraphs 30 to 36 of this Order. EPA has designated the South Dayton Dump ASAO Respondents as its representative solely for the purpose of obtaining access to the Property and conducting response activities.

47. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

48. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits. This Order shall apply to and be binding upon Respondent and its successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

49. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

50. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$37,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340-46 (December 11, 2008) to be codified at 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a

hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof.

51. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

52. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Site or any other site.

53. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

54. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 9:00am and 4:00pm at the EPA offices at:

United States Environmental Protection Agency, Region 5
Superfund Division Records Center
77 W. Jackson Blvd, 7th Floor
Chicago, Illinois 60604-3590

To review the Administrative Record, please contact Thomas C. Nash, Esq. of EPA's Office of Regional Counsel at 312-886-0552 to make an appointment.

VIII. OPPORTUNITY TO CONFER

55. Within three business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than two business days after Respondent's request, or such other time to be determined by U.S. EPA, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Thomas C. Nash, Esq.
Office of Regional Counsel
United States Environmental Protection Agency
77 W. Jackson Blvd (C-14J)
Chicago, Illinois 60604-3590
Telephone: 312-886-0552

IX. EFFECTIVE DATE; COMPUTATION OF TIME

56. Because of the immediate need to conduct the activities described above, this Order shall be effective five business days after its receipt by Respondent or Respondent's designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

57. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last

day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

58. On or before the effective date of this Order, Respondent shall notify EPA in writing whether Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Thomas C. Nash, Esq.
Office of Regional Counsel
United States Environmental Protection Agency
77 W. Jackson Blvd (C-14J)
Chicago, Illinois 60604-3590
Telephone: 312-886-0552

XI. TERMINATION

59. This Order shall remain in effect until Richard C. Karl, Superfund Division Director or his/her designee notifies Respondent in writing that access to the Property is no longer needed.

SO ORDERED.

Date: 7-16-09



Richard C. Karl, Director
Superfund Division

FORM 81-0000 WARRANTY DEED

TITLES ARE REGISTERED IN THE OFFICE
OF THE CLERK OF THE COURT, DAYTON, OHIO

BOOK 1229 PAGE 15

7-82-2428

Know all Men by these Presents

That VERNON F. GLASER and MARIE J. GLASER, husband and wife,

In consideration of One Dollar (\$1.00) and other good and valuable considerations

to them

paid by THE DAYTON POWER AND LIGHT COMPANY

the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to the said THE DAYTON POWER AND LIGHT COMPANY

its successors, heirs and assigns forever,
the following described real estate, to-wit:

Situata in the Northwest quarter of Section 7, Town 1, Range 7 W.R., and in the Southwest quarter of Section 8, Town 1, Range 7 W.R., Van Buren Township, Montgomery County, State of Ohio, being part of a tract as described in deed book Volume 806, page 418, and part of Lot Number 5, shown in Plat book "J", page 56, and more fully bounded and described as follows:

Beginning at a point in the center of the East River Road located North fifty-two degrees seven minutes (52° 7') East a distance of two hundred thirty-seven (237) feet from the West line of said Section 7, (said beginning point is on the North line of Schnelers land as described in deed book Volume 988, page 838); thence North thirty-nine degrees twelve minutes (39° 12') West passing a stone at twenty-five (25) feet for a distance of three hundred sixteen and 66/100 (316.66) feet to a corner in the center of the present pavement of the Southward extension of Broadway; thence North four degrees thirty-five minutes (4° 35') East along said centerline for a distance of fourteen hundred thirty-seven (1437) feet to a corner on the South line of the Miami Conservancy District; thence Eastward on a curve to the right with a radius of twelve hundred (1200) feet for a distance of one hundred fifty (150) feet, arc distance; tangent to curve at beginning has a bearing of South eighty-eight degrees two minutes twenty-six seconds (88° 2' 26") East; thence South eighty-two degrees twenty minutes thirteen seconds (82° 20' 13") East, tangent to said curve for a distance of nine hundred eight and 89/100 (908.89) feet to a monument set for the corner of the Miami Conservancy District and the West right-of-way of the C.C.C. & St. L. Railroad and being a distance of fifty-seven (57) feet from the center of the North bound main track of said railroad; thence South five degrees forty-nine minutes (5° 49') West along said West right-of-way for a distance of eight hundred eighty-one and 13/100 (881.13) feet to a corner; thence continuing along said right-of-way South eighty-four degrees eleven minutes (84° 11') East for a distance of fifteen

BOOK 1229 PAGE 16

(15) feet to a corner in the center of the East River Road; thence South fifty-four degrees forty-eight minutes (54° 48') West along the center of said East River Road for a distance of four hundred twenty-three and 59/100 (423.59) feet to a point on the West line of said Lot Number 5, witness a stone bearing South twenty-one degrees thirteen minutes (21° 13') East a distance of twenty-five (25) feet; thence along the center of said Road South fifty-two degrees seven minutes (52° 7') West for a distance of six hundred eighty-nine and 70/100 (689.70) feet to the point of beginning, containing twenty-nine and 17/100 (29.17) acres more or less, subject to all legal highways.

The above description follows a survey made by J. E. Finrock, Registered Surveyor, in February 1944 and May 1947.

File No.	8882
Transferred	6-26-47
Received	6-26-47
Title	2-05 PM
Recorded	6-26-47
Fee \$	1.80
GEO. BRAUNSCHEWGER Harrison County Recorder	

and all the **Estates, Title and Interest** of the said

VERNON F. GLASER and MARIE J. GLASER, husband and wife,

either in Law or in Equity of, in and to the said premises; Together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof. To have and to hold the same to the only proper use of the said

THE DAYTON POWER AND LIGHT COMPANY

its successors, heirs, and assigns forever;

And the said

VERNON F. GLASER and MARIE J. GLASER, husband and wife,

for themselves and their heirs, executors and administrators, do hereby **Covenant** with the said

THE DAYTON POWER AND LIGHT COMPANY

its successors, heirs, and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; and that the title so conveyed is **Clear, Free and Unincumbered; And Further,** That they do **Warrant and will Defend** the same against all claim or claims, of all persons whatsoever; excepting legal highways and restrictions of record and all taxes and assessments due in December 1947 and thereafter. Except also a certain lease of all or part of the premises herein conveyed by the Grantors herein to the City of Oakwood, Ohio, which is recorded in

BOOK 1229 PAGE 17

Lease Book 38, page 227. By this conveyance the Grantors herein assign all of their right, title and interest in and to said lease to the Grantee, its successors, heirs and assigns.

In Witness Whereof, The said

VERNON F. GLASER and MARIE J. GLASER, husband and wife,

who hereby release all their right and expectancy of **Power** in the said premises, have hereunto set their hands this twenty-sixth day of June in the year of our Lord one thousand nine hundred forty-seven (1947)

Signed and acknowledged in presence of

Geraldine L. Hussong
Geraldine L. Hussong

Andrew U. Thomas
Andrew U. Thomas

Vernon F. Glaser
Vernon F. Glaser
Marie J. Glaser
Marie J. Glaser

State of OHIO, County of MONTGOMERY, ss.

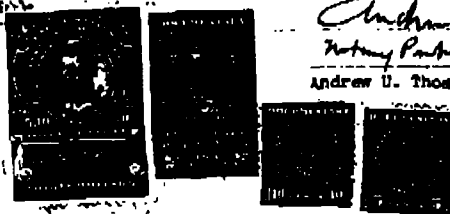
Be it Remembered, That on this 26th day of June, in the year of our Lord one thousand nine hundred forty-seven (1947), before me, the subscriber, a Notary Public in and for said county, personally came

VERNON F. GLASER and MARIE J. GLASER, husband and wife,

the grantor in the foregoing Deed, and acknowledged the signing thereof to be their voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

Andrew U. Thomas
Notary Public in and for the State of Ohio
Andrew U. Thomas



FORM NO. 010 WARRANTY DEED—Small Print

BOOK 1642 PAGE 422

74-174-7

TUTTLEARK TYPESETTER & DESIGNER
Tuttle Law Print Publishers, Baltimore, Md.

Know all Men by these Presents

That BRADLEY SCHAEFFER, married

in consideration of ONE (\$1.00) DOLLAR AND OTHER VALUABLE CONSIDERATIONS

to him in hand paid by THE DAYTON POWER AND LIGHT COMPANY
25 NORTH MAIN STREET, DAYTON 1, OHIOdoes hereby Grant, Bargain, Sell and Convey
to the said THE DAYTON POWER AND LIGHT COMPANY,

its successors ~~BOOK~~ and assigns forever, the following described Real Estate, situate in the Township of Mearns (formerly Van Buren) in the County of Montgomery and State of Ohio, and being part of the Northwest quarter of Section 7, Town 1, Range 7 M.Rs. and part of a tract of land described in Deed 775, Page 74 of the deed records of said County bounded and described as follows: Starting at a point on the west line of said Section 7 located north 1 degree 47 minutes (1°47') west a distance of seventy-nine and two tenths (79.2) feet from the intersection of said west line with the center of the East River Road, said starting point being also the west corner of Schneiters land as described in Deed 988, Page 538 of the deed records of Montgomery County, Ohio, and is further identified as the northwest corner of Peplers land as described in Deed 1000, Page 41 of the deed records of Montgomery County, Ohio; thence north fifty-two degrees seven minutes (52°07') east along Schneiters north line for a distance of twenty-four and six tenths (24.6) feet to the point of beginning, said point of beginning being in the east right-of-way line of the Springboro Pike extension; thence from said beginning point north fifty-two degrees seven minutes (52°07') east along Schneiters north line two hundred seventy-two and four tenths (272.4) feet to a corner in the center of the East River Road and being also a corner of Glasers land as described in deed 806, page 418 of the deed records of Montgomery County, Ohio (witness a stone located north thirty-nine degrees twelve minutes (39°12') west a distance of twenty (20) feet); thence north thirty-nine degrees twelve minutes (39°12') west along Glasers west line two hundred sixty-nine and sixty-four hundredths (269.64) feet to a corner on the east right-of-way line of the Springboro Pike extension; thence south ten degrees fifty-two minutes (10°52') west along said east right-of-way line, two hundred ninety-seven and twenty-four hundredths (297.24) feet to a point; thence continuing along said east right-of-way line south seven degrees forty-five minutes (7°45') east eighty-five (85) feet to the point of beginning and containing .934 acre more or less but subject to all legal highways.

(Claims title by virtue of two deeds, filed July 26, 1889, and recorded in Deed Vol. 164, Page 560 of the Deed Records Montgomery County, Ohio, and the other one filed July 26, 1889 and recorded in Deed Vol. 164, Page 562 of the Deed Records of said County.)
and all the Estate, Right, Title and Interest of the said grantor in and to said premises;
Do hereby and is hold the same, with all the privileges and appurtenances thereto belonging, to said grantees, its ~~BOOK~~ successors
And the said

BRADLEY SCHAEFFER

does hereby Covenant and Warrant that the title so conveyed is Clear, Free and Unincumbered, and that he will defend the same against all lawful claims of all persons whomsoever, save and excepting all taxes, assessments and reassessments due and payable after the December, 1953 installment.



1462-107-0003-2941

BOOK 1612 PAGE 423

In Witness Whereof, the said BRADLEY SCHAEFFER

and PAULA SCHAEFFER, his wife
 hereby releases her right and expectancy of dower in said premises, have
 hereto set their hands, this 30th day of December
 in the year A. D. nineteen hundred and Fifty-Three (1953).
 Signed and acknowledged in presence of us:

Ignace W. Kolitz
Charles A. Brey

Bradley Schaeffer
 BRADLEY SCHAEFFER

Paula Schaeffer
 PAULA SCHAEFFER

State of Ohio,

MONTGOMERY

County, ss.

On this 30th day of December A. D. 1953, before me, a Notary Public
 in and for said County, personally came BRADLEY SCHAEFFER and PAULA
 SCHAEFFER, husband and wife

who grantors in the foregoing deed, and
 acknowledged the signing thereof to be their voluntary act and deed.
 Witness my official signature and seal on the day last above mentioned.

Notary Public

File No.	16,584
Transferred	16,584
Indexed	16,584
Time	11:53 A.M.
Received	12-31-53
Fee \$	1.40
CHARLES S. HECK	
Montgomery County Recorder	

16584
 Montgomery County

BRADLEY SCHAEFFER

TO

THE DAYTON POWER AND LIGHT
 COMPANY
 25 NORTH MAIN STREET
 DAYTON 1, OHIO

19

COUNTY AUDITOR

STATE OF OHIO

SS

COUNTY OF MONTGOMERY

RECEIVED FOR RECORD ON THE

12-31-53

12-31-53

12-31-53

12-31-53

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12-31-53

RECORDERS FEE \$

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

DIX
41-1-3
41-2-19

41-1-196

MORAINE

That THE DAYTON POWER AND LIGHT COMPANY (DP&L), an Ohio corporation, hereinafter sometimes referred to as the Grantor, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid by the CITY OF MORAINE, the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said Grantee, its successors and assigns forever, the following real estate:

Situated in the City of Moraine, County of Montgomery, State of Ohio and in Section 7, Town 1, Range 7, and bounded and described as follows:

Being parts of Lots 2941 and 3061

PARCEL NO. 17

SEP-6-77 217361# *****00

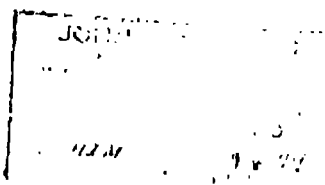
Being a parcel of land lying on the right side of the centerline of a survey, made in 1975 by Columbus Engineering Consultants, Ltd. for Springboro Road and being located within the following described points in the boundary thereof:

Beginning, for reference, at the intersection of the centerline of East River Road with the West line of Section 7; thence along said Section line North 4°07'17" East a distance of 79.49 feet to a point; thence along the Northerly line of a parcel conveyed to Aloha Mobile Homes, Inc. as recorded in Deed Book 2248, Page 28 in the records of Montgomery County, South 86°07'43" East a distance of 28.96 feet to DP&L's Southwest corner in the existing Easterly Right-of-Way line for Springboro Road, said corner being 24.20 feet right of Station 43+22.13 in the proposed centerline of Springboro Road (Ref: Plans for the improvement of Springboro Road on file at the municipal offices of the City of Moraine); said corner being the TRUE place of beginning; thence along said existing Easterly Right-of-Way line North 11°10'46" East a distance of 1475.87 feet to a point, said point being 54.53 feet right of Station 58+00.00 in said proposed centerline; thence South 79°25'44" East a distance of 5.47 feet to a point in the proposed Easterly Right-of-Way line for Springboro Road; thence along said line South 10°50'22" West a distance of 1067.04 feet to a point; thence along said line South 10°24'26" West a distance of 255.04 feet to a point; thence along said line South 13°23'05" East a distance of 64.25 feet to a point in the proposed Northerly Right-of-Way line for East River Road; thence along said line North 58°09'17" East a distance of 86.54 feet to a point in the existing Northerly Right-of-Way line for East River Road; thence along said existing Right-of-Way line South 44°07'47" West a distance of 183.27 feet to a point in DP&L's Southerly line; thence along said line North 86°07'43" West a distance of 5.58 feet to the TRUE place of beginning and containing 0.43 acres, more or less, of which 0.21 acres is contained in Lot No. 2941 and 0.22 acres is contained in Lot No. 3061 of the Revised Plat of the City of Moraine.

It is understood that the strip of land above described contains 0.43 acres, more or less, exclusive of the present road which occupies 0.00 acres more or less.

Said stations being the Station numbers as stipulated in the hereinbefore mentioned survey and as shown by plans on file at the Municipal Offices, City of Moraine.

Except that DP&L, its successors and assigns, reserves the Right of ingress and egress to the street improvements to be constructed on the lands described herein.



77 502E04

DP&L claims title by instrument (a) of record in D.B. 1612, Page 421. County Recorder's Office.

TO HAVE AND TO HOLD the real estate with all the rights, privileges and appurtenances thereto belonging to the Grantee, its successors and assigns forever.

And the Grantor, for itself and its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that it is the true and lawful owner of the said premises, and has full power to convey the same; and that the title so conveyed is free and clear from all liens and encumbrances whatsoever, by, from, through or under the Grantor, excepting zoning ordinances and building restrictions and taxes and assessments not yet due and payable, and excepting that said real estate is subject to the Grantor's First and Refunding Mortgage Indenture dated as of October 1, 1935, as amended, provided, however, that the Grantor shall secure the release of said real estate from the operation of said Mortgage lien by causing the Irving Trust Company, Trustee, under said Mortgage Indenture, to provide a Mortgage Release for said real estate as soon as practicable following the closing; and further, subject only to said exceptions, that it does Warrant and will Defend the same against all claims of all persons, whomsoever.

IN WITNESS WHEREOF, said THE DAYTON POWER AND LIGHT COMPANY has caused its corporate name to be subscribed and its corporate seal to be affixed by its Chairman and Assistant Secretary, this 24th day of August, 1977.

Signed and acknowledged
in the presence of:

THE DAYTON POWER AND LIGHT COMPANY

BY Robert B. Killen
Chairman

And Pauline M. Easter
Assistant Secretary

STATE OF OHIO, MONTGOMERY COUNTY, SS:

Before me, a Notary Public in and for said County and State, personally appeared Robert B. Killen, Chairman and Pauline M. Easter, Assistant Secretary, of THE DAYTON POWER AND LIGHT COMPANY, the corporation which executed the foregoing instrument, who acknowledged that the seal affixed to said instrument is the corporate seal of said corporation; that they did sign and seal said instrument as such Chairman and Assistant Secretary in behalf of said corporation and by authority of its Board of Directors; and that said instrument is their free act and deed individually and the free and corporate act and deed of said THE DAYTON POWER AND LIGHT COMPANY.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Dayton, Ohio, this 24th day of August, 1977.

Notary Public

JOE D. PEGO
RECORDER

SEP 6 4 04 PM '77

RECORDED BY CO. OHIO
RECORDED

NOTARY PUBLIC
JOHN D. PEGO, JR., Notary Public
My Comm. Expires 12/31/78
My Office is at 1000 N. Main St., Dayton, Ohio 45402

77 502E05

This instrument prepared by Richard L. Duncan, Attorney at Law